

PUBLIC CITIZEN LITIGATION GROUP

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BY MAIL AND EMAIL TO

brandprotection@mm-walmart.com

April 29, 2024

Rachel Brand, Esquire
Chief Legal Officer
Wal-Mart, Inc.
608 SW 8th Street
Bentonville, Arkansas 72712

Re: Trademark Demand to WalMartIsTheDevil.com

Dear Ms. Brand:

I write in respond to Wal-Mart's demand, sent to the web host for the gripe site located at walmartisthedevil.com, contending that this domain name misleads the public about the source or affiliation of the website located at that Internet address and hence infringes Wal-Mart's trademark. This factual assertion is utter nonsense, and the legal claim of trademark infringement is contradicted by well-settled law, including a case in which Wal-Mart objected to critical domain names using its trademark. The owner of the domain name is not going to relinquish the domain name.

The facts are these: As the website states, the author of the Walmart Is The Devil website is a former Wal-Mart employee who suffered a serious work injury, felt that Wal-Mart had denied him proper compensation for the disabling impact of that injury, and was further hampered by the mandatory arbitration clause that Wal-Mart imposes on its workforce. He created a site to tell his story to the public and chose a domain name that expresses his negative view of his former employer: walmartisthedevil.com. The website does not sell anything and has no commercial content. At the top of the home page, the words "Unveiling My Walmart Nightmare" appear in large font just below the words Walmart Is The Devil. At the bottom of the page there is an express disclaimer of any affiliation with Wal-Mart and an express reference to the litigation in *Smith v. Wal-Mart*, 537 F. Supp. 2d 1302 (N.D. Ga. 2008). In that case, the court rejected Wal-Mart's effort to suppress critical parodies which, among other things, used the Wal-Mart trademarks in the domain names walocaust.com and walqaeda.com to post websites selling Tshirts on the Wal★ocaust and Wal★qaeda themes. Wal-Mart lost that case despite spending hundreds of thousands of dollars on a consumer study by Jacob Jacoby and representation by Quinn Emanuel.

Although Wal-Mart enjoys substantial rights in its company name, it is not entitled to use those rights to prevent members of the public who wish to express their opinions about the company



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from using that name to identify the company about which they wish to speak—in the words of Justice Oliver Wendell Holmes, “[the name] is not taboo.” *Prestonettes, Inc. v. Coty*, 264 U.S. 359, 368 (1924). Several cases hold that someone who wants to create a website to discuss a trademark holder is entitled to use domain name that contains that trademark without running afoul of the trademark laws, at least so long as the contents of the website are not confusing about whether the author of the site is the trademark owner. *Utah Lighthouse Ministry v. Foundation for Apologetic Information and Research*, 527 F.3d 1045 (10th Cir. 2008); *Bosley Medical v. Kremer*, 403 F.3d 672 (9th Cir. 2005); *Coca-Cola Co. v. Purdy*, 382 F.3d 774 (8th Cir. 2004); *TMI v. Maxwell*, 368 F.3d 433, 436-438 (5th Cir. 2004); *Taubman v. WebFeats*, 319 F.3d 770 (6th Cir. 2003). Here, given the domain name itself, the negative language on the home page of the website, as well as the disclaimer at the bottom, no reasonable viewer could be confused about whether Wal-Mart itself is the author or sponsor of the website.

Several of the cases above, including *Bosley* and *Taubman*, also hold that the Lanham Act cannot be used to suppress non-commercial uses of trademarks on websites. *See also Radiance Found. v. NAACP*, 786 F.3d 316 (4th Cir. 2015). Because the Walmart Is The Devil website is entirely non-commercial, these cases establish a second reason why Wal-Mart’s claim lacks merit.

For these reasons, we ask Wal-Mart to retract its demand for transfer of the domain name and its threat to initiate legal proceedings if the name is not surrendered.

Sincerely yours,



Paul Alan Levy